

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

D.A. NO. 1357/96

Hon'ble Shri R.K. Aahooja, Member(A)

New Delhi, this 22nd day of November, 1996

(A)

Gayalal
s/o Shri Sriram
Fitter, Northern Railway
Delhi Division
D/o the Inspector of Works
Kashmaro Gate
New Delhi.

R/o H.No.90/D-4
Railway Colony
Tuglakabad
New Delhi.

... Applicant

(By Shri A.K. Bhardwaj, Advocate)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
NEW DELHI.

2. The Deputy Chief Engineer(Construction)
Northern Railway
State Entry Road
New Delhi.

3. The Dy. Chief Engineer/C-1
Northern Railway
State Entry Road
New Delhi.

4. Sr. Civil Engineer(Construction)-I
Northern Railway
State Entry Road
New Delhi.

... Respondents

(By Shri B.S. Jain, Advocate)

ORDER(Draft)

The applicant was working as a Fitter in the grade of Rs.950-1500/- when as a result of an enquiry he was reduced to the post of Khalasi in the grade of Rs.750-940/- vide order dated 10.5.1995(A-6). He preferred an appeal and the appellate authority vide its order dated 23.6.1995 modified the order and allowed annual

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increments upto date in the lower grade of 750-940(A-14).

A revision petition was then filed and vide order dated 1.2.1996(A-2), the applicant was restored to the grade of Rs.950-1500 and it was directed that his pay be fixed at Rs.1090/- alleging that the same was the pay drawn by the applicant on the date of punishment. The applicant submits that in actual effect, he was drawing the pay of Rs.1110/- and not Rs.1090/- as is apparent from his pay slip dated 15.4.1995. It is his case that the revisionary authority had ordered the payment of the pay he was drawing at the time the punishment was imposed. Therefore, he is entitled to receive Rs.1110/- and not Rs.1090/- as his basic salary. He is also aggrieved by the act of the respondents in deducting a sum of Rs.2204.50 from his pay, without giving him any show cause notice, on account of so called over payments made to him.

2. The respondents however submit that his pay was correctly fixed at Rs.1090/- w.e.f. 16.1.1996 when he was restored to the post of Fitter. They submit that earlier he was wrongly paid Rs.1110/- due to a clerical error and this error came to their notice only while fixing his pay on restoration to the post of Fitter on the decision of the revisionary authority. They have given the details as to how his pay should have been correctly fixed from 1.8.1990 and they state that he was wrongly given an additional increment on 1.9.1990, even though he had been promoted and fixed in the higher grade on 1.8.1990, only a month earlier. They state that the applicant had no right to receive the excess paid to him and hence the recoveries have been rightly ordered from his pay.

3. I have heard the learned counsels on both sides and have also gone through the pleadings on record. Shri A.K.Bhardwaj,

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learned counsel for the applicant, submits that there is no denying that the pay actually received by the applicant on the date the punishment was imposed was Rs.1110/- and not Rs.1090/-. The order was also of restoration to the same post as on the date of punishment. In view of this, refixation of pay at a lower level means reduction in pay and this cannot be done without giving due opportunity to show cause, which the respondents have not done in the present case. The learned counsel for the respondents, on the other hand, submits that the calculation given by them in the reply clearly establishes that there had been a mistake and it was incumbent upon the applicant, who had been given an increment when it was not due, not to draw the excess amount. Hence, if this opportunity has been taken to correct the pay and to make the recoveries, the same was fully justified. Further more, the learned counsel also points out to the order of the revisionary authority which states that the pay should be restored to Rs.1090/-. In view of this, he submits that the applicant had not been required to be given notice of refixation of his pay.

4. I have considered the matter carefully. The action taken by the respondents for restoration of pay is on the basis of the order of the revisionary authority as a culmination of the disciplinary proceedings. The order clearly shows that the applicant is to be restored to the same position as on the date of imposition of the punishment. It is admitted on both sides that at that stage he was drawing Rs.1110/-. If there was a mistake on whatever account, it was open to the respondents to correct it in the normal course after giving an opportunity to the applicant to explain the position and not as a result of the disciplinary proceedings. The clerical mistake and the correction thereof, and the orders in respect of disciplinary proceedings are two different things and the

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latter cannot be made an opportunity to correct any administrative mistakes earlier made in refixation of the pay of the applicant. In view of this position, the action of respondents in reducing the pay of the applicant after the orders of the revisionary authority restoring him to the original position, is bad in law. Accordingly, the respondents are directed to restore the pay of the applicant to Rs. 1110/- w.e.f. the date of imposing the penalty and also to pay the arrears and consequential benefits, if any. Any recoveries made by the respondents on account of the refixation of the pay should also be refunded to him. These orders shall be complied with and given effect to within a period of one month from the date of issue of this order.

5. It is made clear, however, that these orders will not bar the respondents to take any administrative action they consider necessary for refixation of the pay of the applicant in order to correct any mistake after following the prescribed procedure.

6. There will be no order as to costs.

R. K. Ahuja
(R. K. AHUJA)
MEMBER (A)

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